

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Michael F. Bailey, #273498;)	C.A. No. 3:08-268-TLW-JRM
)	
Petitioner;)	
)	
vs.)	ORDER
)	
A.J. Padula;)	
)	
Respondent.)	
)	

The Petitioner, proceeding *pro se*, brings this action seeking habeas relief pursuant to 28 U.S.C. § 2254. Petitioner is an inmate with the South Carolina Department of Corrections.

On May 2, 2008, the Respondent moved for summary judgment on Petitioner's claims. The Petitioner responded on May 19, 2008. On January 15, 2009, United States Magistrate Judge Joseph McCrorey, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.), filed a Report and Recommendation ("the Report"). In his Report, Magistrate Judge McCrorey recommends that the Respondent's motion for summary judgment be granted. The Report concludes Petitioner did not timely file this action under the one year statute of limitations provided in 28 U.S.C. § 2244. Specifically, the Report concludes that the one year statute of limitations did not reset when Petitioner was granted a belated direct appeal.

The Report was issued before the United States Supreme Court's decision in Jimenez v. Quarterman, 129 S.Ct. 681 (2009). Under the standard announced in Jimenez, this Court concludes Petitioner's claim is timely filed.

For the reasons articulated above, the Court declines to accept the Magistrate's Report (Doc.

20). This case is remanded to the Magistrate Judge. Respondent's motion for summary judgment is denied (Doc. # 13). Respondent has requested the opportunity to move for summary judgment on the merits of Petitioner's claim. Respondent initially moved for summary judgment on statute of limitations grounds. Respondent is free to pursue summary judgment on the merits. Respondent has moved for an extension of time to file objections to the Report. In light of this Order, that motion is moot (Doc. # 24).

IT IS SO ORDERED.

S/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

February 13, 2009
Florence, South Carolina